

ADDENDUM FIVE

NON-CRIMINAL JUSTICE ACT COUNSEL APPOINTMENTS

The court adopts these provisions for furnishing representation for persons financially unable to obtain adequate representation in cases and situations which do not fall within the scope of 18 U.S.C. § 3006A, as amended -- but in which the court believes that the interests of justice will be served by the presence of counsel.

(a) Determination of Need.

In determining need for appointment of counsel, the court shall generally be governed by the guidelines outlined in 18 U.S.C. § 3006A.

(b) Appointment of Counsel.

(1) Counsel shall be selected from the same panels of attorneys designated or approved by the district courts of the Eleventh Circuit as described in Addendum Four, which are hereby approved by this court, or from a bar association, legal aid agency, or other approved organization. In addition, any judge of this court may appoint competent counsel not otherwise included in the preceding categories.

(2) Any person seeking relief under 29 U.S.C. § 621, 42 U.S.C. § 1981, 42 U.S.C. § 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985, 42 U.S.C. § 1986, 42 U.S.C. § 2000a, 42 U.S.C. § 2000d, and 42 U.S.C. § 2000e or in such other cases as the court shall determine to be appropriate may be eligible for representation. The court may approve such representation on a determination that the interests of justice so require and that the person is financially unable to obtain representation.

(3) The court may at its discretion and in the interest of justice substitute one appointed counsel for another at any stage of the proceedings on appeal.

(4) The court may at its discretion and where circumstances warrant make appointments of counsel retroactive so as to include representation furnished prior to appointment.

(c) Withdrawal or Release of Appointed Counsel.

Counsel appointed under this rule to represent a party shall continue such representation until relieved by order of the court of appeals.

(d) Duties of Appointed Counsel.

(1) Appointed counsel shall furnish the party represented, upon written request, with a copy of motion papers and briefs filed for the party on the appeal, and shall send the party a copy of the court's decision when published; the clerk will send appointed counsel an extra copy of the decision for this purpose.

(2) Appointed counsel shall appear for oral argument only when directed by the court.

(3) In the event of affirmance or other decision adverse to the party represented appointed counsel shall promptly advise the party in writing of the right to seek further review by the filing of a petition for writ of certiorari with the Supreme Court.

(4) Appointed counsel shall advise the party represented in each case that, if the party wishes to file a petition for a writ of certiorari with the Supreme Court, the party may have the right to do so without prepayment of fees and costs or giving security therefor.

(5) No appointed representative under this rule shall accept a payment from or on behalf of the person represented in this court without prior authorization by a United States circuit judge.

(e) Payment of Claims for Expenses.

(1) In all appeals covered by this rule, the court of appeals may authorize reimbursement of necessary expenses reasonably incurred in representing a party on appeal, consistent with the limitations contained in the Criminal Justice Act, by any private attorney, bar association, legal aid agency, or other approved organization appointed by the court for the purpose of representing a party on appeal pursuant to this addendum. Compensation for attorney services as a fee for either in-court or out-of-court time is not authorized.

(2) Travel expenses and other expenses reasonably incurred and necessary for adequate representation on appeal may be claimed by an appointed attorney or other legal representative. The clerk of court shall furnish each attorney or other representative at the time of appointment with information as to expenses currently allowable and in accordance with rules, regulations and guidelines promulgated by the Judicial Conference of the United States. Per diem may not be claimed in lieu of actual travel and subsistence expenses. Meal and lodging expenses incurred incident to representation on appeal, necessary long distance telephone calls or telegrams, and the cost of photocopying (but not printing), are reimbursable expenses within the guidelines established by the court. Expenses of general office overhead, personal items, filing fees and expenses of printing of briefs are not reimbursable. Expenses of travel by private automobile may be claimed on a straight mileage basis at the authorized rate. See § (6) of the

guidelines, below. Parking fees and toll expenses are allowable. Transportation other than by private automobile may be claimed on an actual cost basis, but first class fare is not permitted unless absolutely necessary and documentation is provided that tourist or economy fares were not available.

(3) Any special travel expenses other than for maintenance and travel to and from the place of oral argument should not be incurred by any attorney or other legal representative without a prior *ex parte* application to and approval by the court. All out of circuit travel must be approved by the court before the travel is undertaken.

(4) All claims for reimbursement of expenses for representation on appeal shall be itemized in detail and filed with the clerk of court on officially approved forms that the clerk's office will provide. Claims should be filed as promptly as possible and in no event later than 60 days after issuance of the mandate.

(5) After approval of allowable reimbursable expenses by the court, the claim form will be forwarded to the circuit executive for payment.

(6) Reimbursable Expenses.

(a) Travel and transportation expenses. Travel and transportation must be accomplished by the most economical means available. Only actual expenses may be claimed.

(i) Air transportation. Tourist or economy accommodations must be used except where unavailable. A copy of the ticket must be attached to the claim form. If travel by first class air transportation is claimed a detailed explanation of the reasons therefor must be provided with the ticket copy.

(ii) Automobile transportation. The total mileage cost shall not exceed the fare authorized for travel by tourist or economy air transport except in an emergency or for other compelling reasons. Travel by privately owned automobile shall not exceed the current government authorized rate for official travel per mile on a straight mileage basis, plus parking fees, ferry, bridge, road, and tunnel fares.

(iii) Local transportation. Local travel will be accomplished by the most economical means available and only actual expenses may be claimed. Transportation to

and from an airport should be by airport limousine, if available. Taxi fares exceeding limousine fares shall not be paid unless it is certified that limousine service was not available.

(iv) Meals and lodging. Reasonable compensation for hotel or motel accommodations and meals will be allowed on an actual expense basis subject to the limitations governing compensation for federal employees traveling to the same destination. Counsel will be notified by the clerk prior to the scheduled oral argument session of the current limitations. A copy of the hotel or motel bill shall be attached to the claim form.

(b) Photocopying. Actual costs not to exceed 25 cents per page will be paid if copy bill is submitted. For in-house copying, actual costs not to exceed 15 cents per page will be paid.

(c) Express mail and other special arrangements. For delivery of items that could have been mailed via U.S. Postal Service first class mail, additional expenses will be reimbursed only if a satisfactory explanation is given why first class mail service was not utilized. In non-emergency cases routine documents such as briefs and motions should be prepared early enough to permit use of first class mail.

(d) Computer Assisted Legal Research.

1 - By Court Appointed Counsel. The cost of use, by appointed counsel, of computer assisted legal research equipment, may be allowed as a reimbursable out-of-pocket expense, provided that the total amount approved for computer assisted legal research does not exceed the total amount of attorney compensation that reasonably would have been approved if counsel had performed the research manually. Whenever appointed counsel incurs charges for computer assisted legal research, counsel should attach to the claim form the following:

a - a brief statement setting forth the issue or issues that were the subject matter of the research; and

b - an estimate of the number of hours of attorney-time that would have been required to do the research manually; and

c - a copy of the bill and receipt for the use of the equipment or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research).

2 - By Commercial Computer Assisted Legal Research Services. The court may in advance authorize counsel to obtain computer assisted legal research services, where the research is performed by employees of a commercial legal research firm or organization rather than by appointed counsel, provided that the total amount charged for computer assisted legal research services does not exceed the total amount of attorney expense reimbursement that would reasonably be approved if the appointed counsel had performed the research manually. Requests by counsel for authority to obtain such computer assisted legal research services should include the following:

a - a brief explanation of the need for the research services; and

b - an estimate of the number of hours of attorney-time that would be required to do the research manually.

(e) Miscellaneous Expenses. The lowest possible cost for expenses such as postage, telephone calls, brief supplies, and parking, shall be incurred.

(f) Administrative Procedures for Briefs.

A maximum of 10 copies of a brief for personal use, for filing with the court, and for service upon opposing counsel, are authorized, except that in en banc cases 18 copies are authorized. Reimbursement shall not exceed actual cost and in no event more than 25 cents per page per copy for photocopying or similar copy process, if a copy of the bill is attached, and 15 cents per page per copy for in-house copying. The number of copies and number of pages must be itemized on the claim form. Expenses for printing briefs are not reimbursable.

(g) Funding.

By resolution the court may allocate from time to time certain monies from its nonappropriated fund account to support this program of non-CJA counsel appointments.